

## PROBATION—MISDEMEANORS—CONDITIONS

## CHAPTER 142

## S. B. No. 368

An Act relating to conditions of probation for certain convictions and for persons convicted of driving while intoxicated; amending the Code of Criminal Procedure, 1965, as amended, by amending Sections 3a and 6c of Article 42.13; and amending Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

*Be it enacted by the Legislature of the State of Texas:*

Section 1. Section 3a, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended<sup>19</sup> to read as follows:

"Sec. 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

"If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6, 6a, 6b, or 6c hereof. The court may impose any one or all of those conditions."

Sec. 2. Section 6c, Misdemeanor Adult Probation and Supervision Law (Article 42.13, Code of Criminal Procedure, 1965), is amended<sup>20</sup> to read as follows:

"Sec. 6c. If a person convicted of an offense under Article 6701—1, Revised Civil Statutes of Texas, 1925, as amended, is placed on probation, the court shall require, as a condition of the probation, that the defendant

19. Vernon's Ann.C.C.P. art. 42.13, § 3a.

20. Vernon's Ann.C.C.P. art. 42.13, § 6c.

attend and successfully complete an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcoholism shall publish the jointly approved rules and regulations and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider, but is not limited to: the offender's school and work schedule, the offender's health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out-of-state, has no valid driver's license or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation to attend an educational program, the court clerk shall immediately report such fact to the Texas Department of Public Safety for inclusion in the person's driving record. Upon the successful completion of the educational program, the person shall give notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Texas Department of Public Safety for inclusion in the person's driving record. No report of the offense for which the educational program was required as a condition of probation shall be made to the Texas Department of Public Safety unless the person fails to comply with the terms of the probation order. Information regarding the required attendance or successful completion of an educational program may not be used for any purpose other than to determine eligibility under this section."

Sec. 3. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), is amended by adding <sup>21</sup> Subsection (d) to read as follows:

"(d) If a person is convicted of the offense of driving a motor vehicle under the influence of intoxicating liquor, the person's license shall not be automatically suspended if the court places the person on probation and either requires as a condition of probation that the person attend an educational program designed to rehabilitate persons who have driven while intoxicated as provided by Article 42.13, Code of Criminal Procedure, 1965, or waives that requirement, or the jury recommends, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, as amended, probation and no suspension of the person's license. The probation officer shall report to the court whether or not the person has completed the program. If the person fails to complete the program, the person's license shall be automatically suspended as provided by Subdivision (2) of Subsection (a) of this section."

Sec. 4.<sup>22</sup> This Act takes effect January 1, 1982, and applies only to probation and license suspension for offense committed on or after that date. Probation under Article 42.13, Code of Criminal Procedure, 1965, as amended, and license suspension under Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b,

21. Vernon's Ann.Civ.St. art. 6687b, § 24, subsec. (d). 22. Vernon's Ann.C.C.P. art. 42.13 note; Vernon's Ann.Civ.St. art. 6687b note.

Vernon's Texas Civil Statutes), for an offense committed before the effective date of this Act are governed by the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 1, 1981, by a viva-voce vote; passed the

House on April 30, 1981, by a non-record vote.

Approved May 14, 1981.

Effective Jan. 1, 1982.

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## MISDEMEANORS—FINES AND COSTS—DISCHARGE—RATE

### CHAPTER 143

#### S. B. No. 430

An Act relating to the discharge of fines and court costs in misdemeanor cases by service in jail or by labor; amending Article 43.09, Code of Criminal Procedure, 1965; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Section 1. Article 43.09, Code of Criminal Procedure, 1965, is amended<sup>23</sup> to read as follows:

**"Art. 43.09. Fine discharged**

"When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article; or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at fifteen dollars for each day thereof; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county, or while he is serving his jail sentence, and in such instances he shall be entitled to a credit of fifteen dollars for each day or fraction of a day that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby

23. Vernon's Ann.C.C.P. art. 43.09.